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NAVAL WAR COLLEGE

NEWPORT, RHODE ISLAND

INTERNATIONAL LAW SITUATIONS

WITH

SOLUTIONS

1900

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INTERNATIONAL LAW—SITUATIONS.

SITUATION NO. 1.

(A)

Hostilities break out between Turkey and Egypt, the latter country being still a suzerain state of the former. The Turkish forces control the Suez Canal and vicinity, while the Egyptian forces hold Alexandria, which is blockaded by the Turks. The English forces, which are still in Egypt, are as yet neutral.

Having command of the only cruiser in the Mediterranean, you meet at Malta an American merchant steamer, the *Manila*, from Gibraltar bound for Aden, whose master reports to you that he was stopped by a Turkish man-of-war at sea and his vessel searched for contraband of war or evidence of blockade running. The master of the *Manila*, in reporting this to you, asks whether he is to submit to such visit and search in the future.

What information must you have to give an affirmative answer to this inquiry?

SOLUTION.

The situation here presented is complicated by the fact that Turkey and Egypt are ruled by the common sovereignty of the Sultan of Turkey, in theory at least, and hence hostilities between the two countries would technically be of a domestic nature and have the attributes of a rebellion or civil war. Hostilities of this nature are not commonly preceded by a formal declaration of war, and hence the status likely to

arise would not be one of insurrection or insurgency with its limitations as to belligerent rights (the Egyptian state being semiindependent, at least); but one of rebellion and a state of belligerency. Egypt seems to have independent rights granted which, in theory and practice, give her war-making powers without involving Turkey; but, naturally, this does not extend to the power of war declaration against her suzerain state, which is technically Turkey or actually Great Britain, as, under some circumstances, one or both may be involved in any belligerent action of the nominal Egyptian Government.

There should be then, for the benefit of the other nations, some notification or intimation of the existence of hostilities or state of belligerency, in order to establish the state of formal war for neutral states and to allow the exercise by Turkey of the rights of search, blockade, and capture of contraband of war.

The establishment of a local *de facto* blockade does not, of course, give, of itself, a right of seizure upon the high seas, when the vessel or the officials of its country have not been notified of the existence of such blockade. The right of search for contraband of war or for evidences of blockade-running being belligerent rights upon the high seas, a formal notification of the existence of hostilities between Turkey and Egypt should be given to the various governments.

You should then state to the master of this American merchantman, the *Manila*, in answer to his inquiries, the information in your possession as to the state of hostilities between these countries. If the notification of hostilities has been made, he is legally liable to search upon the high seas. In any event, it is well to advise him not to resist search by forcible means or evasion, but accept such, making due and formal protest to the boarding vessel, to the first United States consul he meets, and to the owners of his vessel for reference to the State Department. He

should make a careful statement of the facts and you should advise the Navy Department of the circumstances of the case that have already occurred.

Egypt having made commercial conventions independently with the United States, and having also of her own motion made war against Abyssinia, a declaration of hostilities upon her part against Turkey can be recognized as of sufficiently valid nature to constitute a state of belligerency, and your action can be governed accordingly, until you have heard to the contrary from the home Government of the United States through the regular channels.

REFERENCES.—T. J. Lawrence—"International Law," pp. 71, 72, 144; T. E. Holland—"Studies of International Law," p. 276; W. E. Hall—"International Law" (4th ed.), p. 399; Snow—"Manual of International Law" (2d ed.), p. 79.

(B)

A second American steamer, the *Tutuila*, comes into Malta, and the master reports that while passing through the Suez Canal, from Aden bound for Malta, he was stopped in the canal and searched by a Turkish gunboat for contraband of war. This materially delayed his passage through, and for a time the canal was blocked to navigation.

What action do you take in response to this complaint?

Is the Suez Canal Convention now in force?

Does it apply to vessels of the United States, public and private, in war and peace?

SOLUTION.

It is presumed that the war between Egypt and Turkey is now well known and that belligerent rights are in full operation for both parties. In addition to this, as mentioned before, Egypt is but a part-sovereign state under the suzerainty of Turkey, against whom she may be said to be also in rebellion.

If it were not for the Suez Canal Convention there would be no doubt but that Turkey would have complete control over the Suez Canal and its traffic, either as the suzerain state or as the occupying military and belligerent power. If, however, the Suez Canal is neutralized, then Turkey loses all war power over this waterway and can not exercise her belligerent rights upon vessels passing through the canal. Hence it becomes a matter of necessity: first, to ascertain whether the Suez Canal is neutralized; secondly, as to the status of Turkey under the convention of neutralization; and, thirdly, what status would vessels of the United States possess under the Suez Canal Convention neutralizing the waterway.

The Suez Canal Convention, which was made at Constantinople on the 29th of October, 1888, is generally spoken of as neutralizing the Suez Canal. This convention was signed, subject to ratification, by representatives of nine European powers, viz, Great Britain, Germany, Austria, Spain, France, Italy, Holland, Russia, and Turkey. The high contracting parties, by Article XVI, undertook to bring the present treaty to the knowledge of the states that have not signed it, inviting them to accede to it. The convention was ratified, and ratifications deposited December 22, 1888.

It will be noted, in examining this convention, that the word "neutralized" is not used in the convention, and that the title of the convention refers to it as one respecting the free navigation of the Suez Maritime Canal. In one acceptance of the term neutralization, "abstention from hostilities," the phrase will not apply to the object of this convention, as it proposes to allow a freedom of passage of belligerent vessels on their way to commit hostilities, and also the freedom of passage to vessels captured as prizes and on their way to home ports of the captors. It also impliedly allows the free passage of vessels which,

either under neutral or belligerent flags, are carrying contraband goods and military stores of all kinds for the use of the respective belligerents. It allows also the free passage of hostile expeditions with transports carrying troops with hostile intent for places beyond either terminal of the canal. It is neutralized, however, with respect to the exemption of its fairway area from the commission of any act of hostility, the exercise of any right of war, or the performance of any act having for its object the obstruction of the free navigation of the canal. This neutralization is subject, however, to the conditions mentioned in Article X, which will be mentioned later.

It may be conceded, in this connection, that the word "neutral" or "neutralization" has grown beyond its original limits and has received a larger application, especially when "a condition of neutrality or one resembling it has been created, as it were, artificially," says Holland ("Studies," etc., p. 271), "and the process has been called 'neutralization.'"

Consequently, in the sense of the word as now understood, it may be stated with confidence that if the convention of 1888 is *still in force*, the Suez Canal is neutralized, so far, at least, as the signatory powers are concerned. Is this convention, then, in force in this year of our Lord, 1900? Concerning this, let me quote the words of Professor Holland, of Oxford University, the distinguished international lawyer, who says, on page 293 of his "Studies in International Law," that "It must not be forgotten that Great Britain is a party to this convention only subject to the following important reservation originally made by Sir Julian (now Lord) Paunceforte at the last sitting of the Conference of Paris, on June 13, 1885, repeated by Lord Salisbury, October 21, 1887, only three days before the convention was signed on behalf of the Governments of France and Great Britain, and

afterwards carefully brought to the knowledge of all the Powers concerned, when their acceptance of it was recommended by the British Government:

“‘Les delegues,’ etc., which, translated, reads:

“‘The delegates of Great Britain, in presenting this treaty text, as the definite régime destined to guarantee the free use of the Suez Canal, think that it is their duty to formulate a general reservation in regard to the application of those dispositions as far as incompatible with the transitory and exceptional state in which Egypt finds itself at present and as far as said dispositions might interfere with the liberty of action of their government during the period of occupation of Egypt by the forces of Her Britannic Majesty.’”

It is owing to this reservation that, as was explained by Mr. Curzon in the House of Commons, July 12, 1898, “the terms of this treaty have not been brought into practical operation.”

So long, then, as Great Britain occupies the present position of dominating influence in Egypt, I think that the Suez Canal Convention can not be considered as in force, except so far and when Great Britain chooses to allow it to be in force. When not in conflict with her interests it is to be presumed that she will allow it to be in force.

The second point is as to the status of Turkey under the convention, Great Britain remaining neutral.

Article X of the convention says that the provisions of Article IV (which suspends war rights), Article V (which forbids disembarkation of large bodies of troops), of Article VII (which forbids keeping vessels of war in the waters of the canal), and of Article VIII (which provides for the suppression of any work or the dispersion of any assemblage on the banks of the canal that might interfere with the liberty and security of navigation of the canal), shall not interfere with the measures that the Sultan might find necessary to

take for securing the defense of Egypt, the maintenance of public order, or the defense of other Turkish possessions on the Red Sea.

As a consequence, with Egypt at war or in rebellion, as she was in the time of Mehemet Ali, against the Sultan of Turkey, it is considered that Turkey has the right, in the case under consideration, to exercise her war rights and to search vessels of a neutral power in the waters of the canal.

The third point is as to the status of vessels of the United States under the Suez Canal Convention. The Suez Canal Convention has been neither accepted nor protested against by the United States. It is probable that it would be respected by naval and military forces of the United States, but, under the circumstances above narrated and now existing, vessels of the United States can not be expected to be exempt from the war rights of belligerent forces, when those belligerent forces should be under the flag of the Khedive of Egypt, the Sultan of Turkey, or the Queen of England.

In answer to the interrogations at the end of (B) it is considered, then : first, that no action would be taken in response to the complaint of the *Tutuila* ; secondly, that the Suez Canal Convention is in force, when the interests of Great Britain permit, and that, if in force, it would, under the third interrogatory, apply to the vessels of the United States in the waters of the canal.

SITUATION NO. 2.

War existing between the United States and a European power, you are exercising the right of search in Eastern Asia, to facilitate operations against a colonial port of the hostile country in Northern China. The port is blockaded by sea, but only partly invested on the land side. It is especially important that no supplies that will continue or facilitate defense be allowed to reach this blockaded port by sea, or indirectly overland.

Cruising offshore you meet an Italian (and neutral) ship carrying, as part of her cargo, rice and other provisions that are marked for mercantile firms in the besieged port. The papers and circumstances are very clear as to the ship's destination, which is a neutral port on the same peninsula as the besieged port.

What action do you take toward the Italian vessel?

What action do you take toward a German vessel from Hamburg under similar circumstances?

SOLUTION.

In the treaty between Italy and the United States concluded February 26, 1871, and proclaimed November 23, 1871, it is provided in Article XII that, in the event of war between the two countries, the private property of their respective citizens and subjects, with the exception of contraband of war and evasion of blockade, shall be exempt from capture or seizure upon the high seas or elsewhere by the armed vessels or forces of either party. This treaty, however, to remove all doubt as to what is contraband of war, in Article XV says, "the contracting parties expressly agree and declare that the following articles, and no others, shall be considered as comprehended under this denomination" of contraband of war. In the articles mentioned in the four paragraphs that follow, there are not to be found rice and other provisions; consequently, you can not, under this treaty, seize or detain this Italian vessel or any of its cargo. This treaty is still in force, though liable to abrogation after an announcement of twelve months by either party. (See "Treaties of the United States," pp. 584 and 585.)

The German vessel from Hamburg is in a different category. There are no treaties with the Hanseatic cities, the North German Union, nor with the German Empire specifically defining contraband goods.

In Article XIII of the treaty between the United States and Prussia made in 1799, and confirmed and

renewed in Article XII of the treaty between the United States and Prussia of 1828, it is provided that contraband goods intended for an enemy are not to be confiscated, but may be detained for such time as the captor may consider necessary, or may be bought by the captor for his own use. If the vessel carrying contraband surrenders such matter, she can be released and proceed on her voyage. Military stores destined for the enemy are designated as contraband of war. Considering that, in this case of blockade and partial investment, starvation is necessarily relied upon as a means of reducing the port and town, it is not too much to consider provisions as military stores, and hence contraband of war. By General Order No. 492, issued by the Navy Department, in concurrence with the State Department, during the late war with Spain, there are classed among articles that are conditionally contraband, "provisions, when destined for an enemy's ship or ships or for a place that is besieged."

The question next arises, Is this country still restricted by the treaty of 1799-1828 made with Prussia, or, in other words, does the German Empire and its vessels succeed to the treaty rights and obligations of Prussia and Prussian vessels, and do Hamburg vessels acquire, by union with the German Empire, rights and obligations that belong to one of the other constituent parts of the empire?

Professor Niemeyer, of the University of Kiel, a distinguished German publicist, says upon this subject: "Prussia not having ceased to be a self-dependent state, and only part of her sovereign rights having been assigned to the German Empire, the latter can not be regarded as a universal successor to all treaties into which the former has entered. But, so far as international functions are concerned, it may be said that the rights and duties of Prussia are now to be regarded as those of Germany."

As to our own views upon the subject, the following may be found pertinent to the question under review: In the case of the deserters from the Prussian frigate *Niobe*, it was decided by the Attorney General of the United States (see *Opinions of Attorney General*, vol. xii, pp. 463-467) that the provisions of the treaty of May 1, 1828, between the United States and Prussia for the arrest and imprisonment of deserters from public ships and merchant vessels of the respective countries, apply to public vessels sailing under the flag of the North German Union, and to deserters from such vessels.

The State Department, on December 30, 1882, in Loeb's case, wrote to the United States Minister at Berlin that "this Government can not assent to the doctrine of the nonapplicability of the treaties of 1868 (with Prussia) to Alsace-Lorraine."

On June 28, 1887, Secretary Bayard, writing to the United States Minister at Berlin (Foreign Relations for 1887, p. 396), says:

"The United States have never denied the applicability of all treaties executed by them to territories acquired by them subsequent to the date of such treaties. On the hypothesis that territories annexed by a sovereign are not bound by the treaties previously entered into by him, California, annexed by the United States by the treaty with Mexico of 1848, would not be subject to the provisions of the treaty with Prussia of 1828. It is difficult to suppose that Germany would insist on a construction which would divest her, so far as concerns the California coast, of the valuable commercial rights conferred on her by that treaty, and would deprive her consuls at California ports of the important prerogatives which that treaty gives; the very one-sidedness of such a construction discloses its incompatibility with the principles of justice, as well as of international law."

This view was conceded by Germany in the case of Hartmann. (See "Foreign Relations, 1897," pp. 230, 231.)

The constitution of the Empire of Germany says, in first paragraph, Article 53: "The navy of the Empire is a united one, under the supreme command of the Emperor."

And in the first paragraph of Article 54, "The merchant vessels of all states of the union shall form the commercial marine of the Empire."

In the third paragraph it is stated: "The merchant vessels of all the states of the union shall be admitted on equal footing to the harbors, and to all natural and artificial water courses of the several states of the union, and all shall be entitled to similar treatment."

Under the circumstances and precedents and authorities just quoted, it is considered that your action should be to detain the vessel and cargo of the Hamburg vessel, as the voyage is a continuous one and the provisions contraband, because, though primarily bound to a neutral port, the ultimate destination is a besieged place of the enemy.

If the German vessel offers to surrender the contraband, or if the purchase of it is considered desirable and this opportunity of purchase is offered, the vessel can be released and allowed to proceed, the contraband goods having been disposed of in either of the ways suggested.

SITUATION NO. 3.

(A)

Being at war with all the Continental European powers, including Italy and Sweden, you are in command of a fast cruiser in the North Sea and find that the American blockade of Stockholm produces little effect, as Italian ships bring in provisions, etc., for general use in Sweden, through the Norwegian and Swedish ports not blockaded. A large Italian merchant steamer, full of grain from Odessa, is sighted and visited by you. She has no contraband of war on

board, as you view the matter, but she is an enemy's vessel.

Are your views right, and what do you do with the vessel and cargo?

SOLUTION.

Treaties made in peace, but which apply particularly to war conditions, become operative and in full force in war times. Provisions are not contraband of war by the definitions accepted by the United States and Italy in the treaty previously referred to, and hence, provisions can not be touched and the cargo is exempt. Private property on the high seas is also exempt from capture, so the vessel, as a merchant steamer, is also exempt from capture. If, however, you can secure any proof of an intention to enter Stockholm, which is blockaded, the vessel can be seized. The blockade must be an actual one by a force capable of preventing an entry, and so stationed as to create an evident danger to a vessel attempting to enter it. (Treaties, etc., U. S., Art. XIII, p. 584.)

(B)

A Swedish vessel, bound for an open port, is also overhauled and searched, and found to have on board a valuable cargo from Colon, owned by resident firms of that port, citizens of Colombia, which is neutral.

What action do you take toward the ship and cargo?

SOLUTION.

Sweden being at war with the United States and private property at sea being not exempt from capture by treaty with her, you seize the vessel as an enemy merchant vessel and send it in for adjudication to the nearest port in which the United States have territorial jurisdiction and a prize court.

The cargo also should be seized, upon the ground that the treaty of 1846 with New Grenada, of which state Colombia is the legal successor, and which treaty

is in force, the flag of the enemy will not protect goods of a neutral; but neutral property is held to be enemy's property, and, as such, is liable to detention and confiscation, except such property as was put on board such vessel before the declaration of war, or even afterwards, if it were done without the knowledge of it; but the contracting parties agree that, two months having elapsed after the declaration of war, their citizens shall not plead ignorance thereof. (U. S. Treaties, Art. XVI., p. 199.)

SITUATION NO. 4.

An internal outbreak took place in a Central American country, which ended in the triumph of what had been recognized by the United States as the legitimate government of the country.

A number of American citizens, who took sides with the revolutionary party and joined their ranks as armed men, were allowed to leave the country, under an agreement between the successful military officials on one side and the United States consul and the senior naval officer present of the United States on the other hand.

Some weeks after these arrangements were made, you arrive in command of a United States vessel of war and learn that no formal decree of exile has been issued against these Americans, although their share in the revolutionary attempts is well known and susceptible of proof. Some of the Americans referred to propose to land again in this Central American country and port from a Norwegian vessel. Your predecessor had instructions to extend protection to Swedish and Norwegian vessels, as if they were vessels of the United States.

What action do you take in regard to the landing of the Americans referred to?

SOLUTION.

The treatment of the American citizens who had taken up arms as filibusters against the legitimate Government of the Central American country was, to say the least, fair and humane.

Included within the right of self-preservation, however, would be any action on the part of this Central American Government forbidding or preventing the landing of the Americans who had previously taken up arms against it. It is within the right of any Government, should it deem it necessary, to forbid the landing of any class or kind of emigrants, or other persons, as in the case of the United States with respect to paupers, habitual criminals, or Chinese.

On page 57 of SNOW (2d ed.) it is stated, furthermore, that "Citizens or subjects of one state merely entering into the military or naval service of a foreign country do not thereby lose their citizenship; but if they engage in warlike measures, or in an attack upon the Government in whose jurisdiction they reside, they forfeit claim to the protection of their own Government."

Under the circumstances you can say to the Americans proposing to land that the Central American Government has a right to forbid their landing within its jurisdiction and to prevent it by force; or if they succeed in landing to expel them by force. It has no right, however, to go beyond this.

At all events you should inform the "*deportados*" of the danger they run, and after counseling them that they act at their own risk you should, if they land and are arrested, see that they have a fair trial, etc.



